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10/084,715	02/25/2002	John Zimmerman	US020013	6622

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BRIARCLIFF MANOR, NY 10510

EXAMINER

JONES III, CLYDE H

ART UNIT PAPER NUMBER

2623

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/084,715	<b>Applicant(s)</b> ZIMMERMAN, JOHN	
	<b>Examiner</b> Clyde H. Jones III	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. The declaration filed on 9/11/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Bates (US 2003/0145321 A1) reference for the following reasons:

- The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Bates reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The applicant did not provide any facts and or documentary evidence, such as sketches, lab notebook entries, etc., as required under MPEP 715.07(I). The declaration and power of attorney submitted by the applicant is not evidence of conception of the instant invention. It is not clear if the declaration and power of attorney is related or pertains to the instant invention.
- The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Bates reference to either a constructive reduction to practice or an actual reduction to practice. The applicant did not provide any evidence of diligence as required by 715.07(a). Under certain conditions a 2-day period lacking activity has been held to be fatal [In re Mulder,

716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983)]. See MPEP § 2138.06 for a detailed discussion of the diligence requirement for proving prior invention.

- The affidavit or declaration is defective because it is not clear which one of the three ways applicant is attempting to establish prior invention of the claimed subject matter under 37 CFR 1.131 (b). See MPEP 715.07 (III).
- The affidavit or declaration is defective because applicant did not indicate that the invention was established in this country or a NAFTA or WTO member country. See MPEP 715.07 (c).

***Claim Rejections - 35 USC § 102***

2. Claims 1, 5, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Bates et al. (US 2002/0145321 A1).

Regarding claim 1, Bates teaches an audio-video program recommendation system for listing program material in accordance with a user's preferences (fig. 1-4), the system comprising:

a microprocessor 24 (fig. 2) for recognizing (receiving) and processing identifying (indication) signals for program items (shows or movies, etc) (par. 29, 37);

an electronic storage device 26 (fig. 2) coupled to the microprocessor for storing look-up lists (fig.s 3, 4) of program items (par. 41) and signals associated therewith

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(reads on the additional data stored with the program items, e.g., account, rating, time information, etc.; par. 31, 36, 37, 41, 50);

a recommendation (personalized EPG) algorithm incorporated into the microprocessor for choosing (par. 26, 27, 29, 30) and listing recommended program items (positively rated and/or new movies) based upon the nature (good/poor rating; par. 42, 29, 30) and frequency of previous program item selections (par. 42, 26, 27; in which inclusion of programs into the EPG is based on passed selections/viewings of the program) that are recorded in the look-up lists (fig. 3, 4) in the electronic memory device (par. 31, 45, 37); and,

a user-operable input signal device (reads on the controls of the STB 14 – par. 36) coupled to the microprocessor (fig. 2), enabling a user to selectively identify selected ones of the recommended program items as having been previously viewed (par. 30; in which a program that is “new”/unwatched and above the user’s rating value is filtered though, i.e., recommended by, the EPG through the display and after the recommended program is watched the user selects the program to rate it), such that the microprocessor then adds the selected ones of the program items to the look-up lists 52 (fig. 4) (par. 30, 41, 36, 37; in which the user’s rating of the program is added to the show rating list) in the memory device 26 – fig. 2).

Regarding claim 5 Bates teaches an audio-video program recommendation system for listing program material in accordance with a user's preferences (fig. 1-4), the system comprising:

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a computer apparatus (14 – fig. 2) capable of recognizing (receiving), processing and storing look-up lists (fig. 3, 4) of identifying (indication) signals for program items (par. 31, 36, 37, 39, 41, 50);

a recommendation (personalized EPG) algorithm incorporated into the computer apparatus for choosing (par. 26, 27, 29, 30) and listing recommended program items (positively rated and/or new movies) based upon the nature (good/poor rating; par. 42, 29, 30) and frequency of previous program item selections (par. 42, 26, 27; in which inclusion of programs into the EPG is based on passed selections/viewings of the program) that are recorded in the look-up lists (fig. 3, 4) in the electronic memory device (par. 31, 45, 37); and,

the computer apparatus further comprises a keyboard having at least one key capable (Bates inherently has a keyboard, e.g., a remote controller or front panel with at least one key/button, for activating commands on the user input devices; par. 42, lines 10-20; 30, 32) of identifying selected ones of the recommended program items as having been previously viewed (par. 30; in which a program that is “new”/unwatched and above the user’s rating value is filtered though, i.e., recommended by, the EPG through the display and after the recommended program is watched the user selects the program to rate it), such that the computer apparatus then adds the selected ones of the program items to the look-up lists 52 (fig. 4) (par. 30, 41, 36, 37; in which the user’s rating of the program is added to the show rating list) in the memory device 26 – fig. 2).

Regarding claim 7, Bates teaches the method comprising the steps of: accessing a first electronic list representing programs available for viewing at a given time (par. 28, 30; step 74 – fig. 5A; in which the system has to access an EPG list of programs currently available, through broadcasters or listing services as conventionally done, to provide the EPG schedule of available programs to the user);

accessing a second electronic list 42/52 (fig. 3/4) representing a compilation of programs previously selected for viewing by an identified user (par. 51, 52, 31, 32; in which the user is identified) of the system (par. 28, 41, 42; steps 86, 87, 88 – fig. 5A & 5B);

comparing the first electronic list with the second electronic list (steps 86, 87, 88 – fig. 5A & 5B), to obtain a list of recommended program items based upon the nature of the previously selected programs identified in the second electronic list (par. 28, 30, 45; in which currently available programs are compared to the user's view history for recommending programs equal or above the user's rating);

displaying the list of recommended program items on a video display device for inspection by the user (step 78 fig. 5A; par. 43, 28, 30);

selectively identifying and characterizing by a corresponding electronic signal ("rate the show" signal/event), a program item on the list of recommended program items that was previously viewed by the user (step 68, 69 – fig. 5A; par. 29, 30, 42; in which the user identifies a show in the list and actuates the input device to rate the show after it has been watched);

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appending to said second electronic list, program items included in the list of recommended program items that are currently selectively identified and characterized by the identified user (par. 28, 29, 30; step 67 – fig. 5A); and,

displaying the first electronic list on a video display device, while excluding from the display all programs on the second list (par. 27, 30, 42; in which previously viewed shows are removed from the EPG's displayed list).

Regarding claim 8, Bates teaches checking for the receipt of a signal indicating the user's desire to view (e.g. a channel change event/signal) a program and presenting such identified program item for viewing (steps 68, 70; par. 30, 42-45; in which the user actuates a channel/program switch function and the system displays the next program/channel in accordance with the system settings).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2-4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates et al. (US 2002/0145321 A1) in view of Percy et al. (US 4,646,145).



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Regarding claim 2 and 6, Bates fails to teaches a plurality of push buttons (par. 42, lines 10-13; par. 38) but fails to teach dedicated. In an analogous art Percy teaches it is desirable to use a dedicated push-button 17 (fig. 2) in order to enable viewer selective actuation of input devices (col. 14, lines 6-10) and identify viewer reactions to a program in essentially real time (col. 13, line 5-29). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Bates to include dedicated push buttons as taught by Percy for the added advantage of increased convenience and simplicity for the user and enabling the user to more quickly/correctly input program rating selections.

Regarding claim 3 Bates teaches the user operable input device serving to selectively identify the selected ones of the recommended program items as having been previously viewed (par. 28, 29), and serving to identify a selected one of the recommended program items for current viewing (par. 30). Bates further teaches a plurality of push buttons (par. 42, lines 10-13; par. 38), however fails to teach dedicated push buttons. In an analogous art Percy teaches it is desirable to use dedicated push-buttons 17 (fig. 2) in order to enable viewer selective actuation of input devices (col. 14, lines 6-10) and identify viewer reactions to a program in essentially real time (col. 13, line 5-29). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Bates to include dedicated push buttons as taught by Percy for the added advantage of increased convenience and

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simplicity for the user and enabling the user to more quickly/correctly input program rating selections.

Regarding claim 4, Bates in view of Percy teach the recommendation algorithm further serves to recognize program items that are identified as unacceptable (unacceptable, i.e., below user rating values, i.e., rated poorly, previously watched or watched above the maximum time limit, for channel surfing or EPG display) (par.s 26-31);

the microprocessor is programmed to create a look-up list of unacceptable programs for storage in the memory device (fig. 4; shows poor/unacceptably rated "Gilligans" show; par. 45); and, at least another one of the plurality of dedicated push buttons (17 – Percy fig. 2) serves to identify unacceptable programs (Percy – col. 13, lines 5-16; Bates – par. 30) for storage in the memory device (PVR, TIVO, VCR, hard disk memory, etc) (par. 35-37, 30; in which the user can not record a program that it or it's channel is blocked out by the system).

5. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates et al. (US 2002/0145321 A1) in view of Reynolds et al. (EP 0774866 A2).

Regarding claim 9, Bates teaches displaying of the recommended items as discussed in claim 1 above, however fails to specifically disclose a screen menu and indicating the actions to be taken by a user employing the method. In an analogous art,

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Reynolds teaches a screen menu (fig. 6 a-c), and indicating the actions (request suggestion, tune to a program, delete an item, etc) to be taken by a user employing the method for editing and customizing EPG displays (col. 5, lines 46-col. 6, line 4). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Bates to include a screen menu and indicating the actions to be taken by a user employing the method as taught by Reynolds for the added advantages of an increased convenience to the user, and a more informative and easy to use interface with guidance.

Regarding claim 10, Bates in view of Reynolds teach displaying together with the screen menu, an illustrative caption identifying the method of recommending program listings (Bates – par. 30, 32; in which Bates teaches the user turning on/off skip view processing; and Reynolds- fig. 6a; col. 5, lines 45-50; in which Reynolds teaches it would have been obvious to modify Bates to include displaying illustrative caption/soft keys on the menu which identify methods of display, e.g., recommended/suggested programs, new programs only, etc.).

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clyde H. Jones III whose telephone number is 571-272-5946. The examiner can normally be reached on 9-5:30 p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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